

INFORMATION FOR BIDDERS

SECTION 1 – INTRODUCTION

The Instructions to Bidders (“Instructions”) are intended to assist bidders in the preparation of bids, to call attention to legal requirements, and to set forth conditions upon which bids are submitted and received by the City of Gardner.

The award of the contract with respect to this invitation is governed by Chapter 30b of the Massachusetts General Laws (MGL). Certain provisions of the foregoing statute and of other applicable statutes are summarized in these Instructions. Whenever these Instructions or any other contract documents set forth or summarize applicable statutory provisions, whether or not the statutes have been specifically referred to, such summaries are for convenience only, do not assert to be complete or correct as summaries of any particular material, and shall in no respect supersede, expand or limit the rights and duties of the City or bidders in matters governed by the statute.

SECTION 2 – DEFINITIONS

The following definitions shall apply in these Instructions, Bidding Documents, and Contract Documents:

The “City” means the City of Gardner, Massachusetts.

The term “bidder” shall mean any individual, group, entity or business responding to the City’s procurement invitation.

The term “bidding documents” shall include the City’s bid package, including purchase descriptions, specifications, drawings, submission requirements, scope of work and all related documents, bidder’s submission, including any related documents, prices, deliverables or services promised, and any and all addenda issued prior to receipt of bids, which are all incorporated and shall be made a part of the Contract as written herein.

The terms “addenda” and “addendum” shall mean written documents and/or drawings issued by the City prior to execution of the contract which modify, correct, modify, explain or interpret the bidding documents.

The word “Contractor” means the person, firm or corporation with whom the contract is made by carrying out the provisions of these specifications and the contract.

“Contracting Officer” shall be interpreted as the Purchasing Agent of the City of Gardner.

“Firm Price” shall mean a guarantee against price increases during the life of the contract.

SECTION 3 – EXAMINATION OF BID DOCUMENTS; PRE-BID CONFERENCE

Before submitting a bid, the bidder must (a) thoroughly examine the Bid Documents; (b) fully examine and be acquainted with local conditions that may in any manner affect cost, progress or performance of the work identified in the specifications; (c) be familiar with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work identified in the specifications; (d) study and carefully associate observations with the requirements of the Bid Documents.

Failure of bidder to visit the site and/or be acquainted with the Bid Documents and work site, or to attend pre-bid conference, if any, shall in no way relieve the bidder from any obligation with respect to this procurement invitation.

Each bidder shall promptly notify the Contracting Officer of any ambiguity, inconsistency or error discovered upon examination of the Bid Documents, site or local conditions.

The submission of a bid shall constitute a representation by the bidder that every requirement of the Bid Documents has been complied with, and that the Bid Documents are sufficient in scope and detail and convey understanding of all terms and conditions for the performance of the contract.

SECTION 4 – ADDENDA

All questions and requests for clarification or interpretation of the Bid Documents shall be in writing and addressed to the Contracting Officer, and to be given consideration shall be received at least five (5) days prior to the bid opening.

Clarification or interpretation and any supplemental instructions, if issued, will be issued in the form of written Addenda. Each bidder shall be responsible for determining that all Addenda issued have been received, and failure of bidder to receive such Addendum shall not relieve bidder from any obligation under the bid as submitted.

The City will make every effort to issue Addenda not later than three days before the date fixed for the opening of bids.

All Addenda issued shall become part of the Bid Documents.

Oral clarification or interpretation will be of no legal effect. The City shall not be responsible for, and no bidder shall rely upon or use as the basis of claim against the City or the City's agent, any information, explanation or interpretation of the Bid Documents rendered in any fashion except as herein provided.

SECTION 5 – WAGE RATES

If applicable, minimum rates of wages for work performed under this contract shall be as predetermined by the State Department of Labor and Workforce Development, in accordance with the provisions of Massachusetts General Laws, Chapter 149, Section 27.

MGL Chapter 149 provides record-keeping requirements for contractors and subcontractors with respect to employees, hours and wages. Bidders' attention is called to MGL Chapter 149, Section 148 relating to weekly payment of wages.

SECTION 6 – SALES TAX

Purchases made by the City are exempt from Massachusetts Sales Tax in accordance with the provisions of MGL Chapter 64H, Section 6. Bidders shall not include any amounts for tax. A certificate of exemption, granted by the Massachusetts Department of Revenue, may be obtained from the City of Gardner.

SECTION 7 – PREPARATION AND SUBMISSION OF BIDS

Each bid shall be submitted upon the bid forms provided by the City of Gardner, copies of which are contained in the Bid Documents. Bid forms shall be submitted with the Bid Documents. All blank spaces shall be filled in, in ink or typewritten, in words or figures where applicable.

Where itemized lump sum or unit prices are called for, all such prices shall be provided by the bidder.

In the event of a discrepancy between prices written in words and prices written in figures, the written words shall govern. In the event of a discrepancy between the indicated sum of any column of figures and the correct sum thereof, the correct sum shall govern.

The bid shall state the legal name of the bidder and shall be signed in ink by the person or persons legally authorized to bind the bidder to a contract. The name and title of the person or persons signing the bid shall be typed or printed below the signatures.

Each bid and bid deposit (where applicable and described below) shall be submitted to the City at the place stated in the Bid Documents, in a sealed envelope bearing the name of the bidder, bidder's address, and the title of the project for which the bid is submitted. If submitted by mail, the sealed bid and deposit shall be enclosed in an envelope with the notation "BID ENCLOSED" on the face and addressed as indicated in the Bid Documents.

Conditional bids will not be accepted.

SECTION 8 – RECEIPT OF BIDS

All bidders are cautioned to allow ample time for transmittal of bids. Bidders are solely responsible for delivery to and receipt by City of bids at the time and place stated in the Bid Documents. Bids received after the specified time or at a place other than the specified location will not be accepted or recognized. The time of receipt will determine the acceptability of mailed bids, regardless of postmark.

Any bid may be withdrawn by the bidder by written notice received by the Contracting Officer at the address for receipt of bids specified in the Bid Documents, prior to the time scheduled for the opening of such bids.

No telephone or telegraphic bid, change in bid, or withdrawal of bid will be received or recognized.

A bid may be amended or modified only by withdrawing the bid and resubmitting another bid prior to the time for opening of bids.

No bid may be withdrawn for sixty (60) days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Bids will be opened and read publicly at the place and time stated in the Bid Documents. Bidders and/or their authorized representatives are invited to be present.

SECTION 9 – BID DEPOSIT

Each bid must be accompanied by a bid deposit in the form of a bid bond, or certified check, or a treasurer's or cashier's check issued by a responsible bank or trust company. The check must be made payable to "Bidder (insert bidder's name) OR the City of Gardner."

A bid bond shall be (a) in a form satisfactory to the City of Gardner; (b) with a surety company qualified to do business in the Commonwealth of Massachusetts and satisfactory to the City of Gardner; and (c) conditioned upon the faithful performance by the principal of the agreements contained in the bid.

The bid deposit shall be in the amount of five percent (5%) of the total value of the bid.

SECTION 10 – REJECTION OF BIDS

The City of Gardner shall reject every bid which does not conform to the statutory requirements or the Bid Documents.

The City of Gardner reserves the right to reject any and all general bids which contain erasures, alterations, conditions, additions, errors or irregularities of any kind, or which contains proposed prices for any class or item of work which are, in the judgment of the City, substantially less or more than the actual cost to complete the work; provided, however, that the City reserves the right to waive any and all informalities as to form. Matters as to substance shall not be waived.

SECTION 11 – AWARD OF CONTRACT

The contract will be awarded to the lowest responsible and eligible bidder complying with the conditions and requirements provided in the Bid Documents.

Award of the contract will be made within thirty (30) days, Saturdays, Sundays and legal holidays excluded, after (1) the opening of bids or (2) the receipt by the City of any approvals necessary from federal or state agencies in connection with the project, whichever is later.

Successful bidder will be notified in writing that the bid has been accepted and awarded. The successful bidder shall execute the contract and furnish the required bonds and insurance certificates to the City within five (5) days, Saturdays, Sundays and legal holidays excluded, after presentation of the contract or notice that the contract is ready for execution.

If the bidder selected fails to execute the contract in accordance with the terms of the Bid Documents, and furnish bonds and insurance certificates, the award will be made to the next lowest responsible and eligible bidder.

SECTION 12 – DOCUMENTS TO BE FURNISHED WITH BID SUBMITTAL

Pursuant to MGL Section 49a, Chapter 62c, the contractor must certify that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes. A form is included with the Bid Documents.

Affidavit of compliance with laws relating to corporations, and evidence of corporate authority with respect to execution of contract documents on behalf of the contractor shall be provided with the bid.

The Bidder must certify that no official or employee of the City of Gardner has pecuniary interest in this proposal or contract, and that this bid is made in good faith without fraud or collusion or connection with any other person submitting a proposal.

For Contracts in excess of \$100,000 the Contractor must file, as outlined in MGL C 30, Section 39R(c): a statement assuring that its system of auditing controls ensures management accountability and protection of assets; and a statement by a CPA that it has examined the statement of management and giving an opinion whether the representations of management are consistent with its system of controls and its financial statements.

SECTION 13 – DOCUMENTS TO BE FURNISHED UPON EXECUTION OF CONTRACT

13.1 LIABILITY AND PROPERTY DAMAGE INSURANCE

If the bid or proposal documents require insurance, Contractor shall purchase and maintain coverage with a company qualified to do business in Massachusetts in forms acceptable to the City and in adequate amounts as shall protect the Contractor, the City and its employees, agents, and officials. Coverage must be in place and remain in effect for: workers' compensation, comprehensive public and commercial general liability, owner's protective liability, and property damage, including products, completed operations, and contractual liability; automobile liability for protection of employees and others from bodily injury and damages to property which may arise out of or result from the Contractor's operations under this agreement. This insurance shall be in limits specified by Law or in the bid specifications. In

no case shall the limits be less than: \$1,000,000 in bodily injury and property damages on account of any one person and \$1,000,000 on account of any one accident and \$1,000,000 in the aggregate; \$1,000,000 in automobile and truck liability, including hired vehicles, on account of any one person and \$1,000,000 on account of any one accident and \$1,000,000 for each occurrence for property damage liability. A Certificate of Insurance naming the City of Gardner as certificate holder shall be filed with the Purchasing Agent prior to commencement of any Contract's operations. The "Description" section shall contain the following sentence: "The City of Gardner is an additional insured under this policy." All policies and certificates shall contain an endorsement requiring at least thirty (30) days written notice of non-renewal, restrictive amendment, or cancellation of coverage to the City. Compliance by the Contractor with the insurance requirements shall not relieve the Contractor from liability under the full indemnity provisions contained herein. Failure to provide insurance as established above shall be considered a breach of Contract and grounds for termination of the Contract.

13.2 WORKERS COMPENSATION INSURANCE

Contractor shall furnish the City of Gardner with certificates showing that all employees who shall be connected with this work are protected under worker's compensation insurance policies.

City must be provided with Certificates of Insurance prior to execution of a Contract.

SECTION 14 – COMPETENCE

It is the intent of the City that this contract be awarded to a responsible bidder, able to provide the appropriate expertise and experience with this particular procedure, as specified. Submission of proposals lacking the appropriate required experience will be treated as incomplete and will not be considered.

Submission of a bid offer authorizes the City to contact any and all parties referenced by the bidder in regard to financial and operational information; and to request verification of any information or qualifications submitted as part of any offer to the City. Negative references may be grounds for rejection.

Contract will be awarded to responsible established bidders capable of performing the class of work contemplated. Before the awarding of the Contract, any bidder may be required to show the necessary facilities, experience, ability and financial resources are available to perform work in a satisfactory manner and within time stipulated. Bidders may be required to furnish statements as to experience and financial status. Bidder agrees to furnish in confidence such information as will enable judgment of the financial responsibility of the bidder and any listed subcontractors.

The City reserves the right to request site visits and demonstrations of existing Bidder operations.

The Bidder shall provide a list of clients for whom similar services are provided, indicating for each client the date services began and the responsible official and phone number for each contract.

SECTION 15 – PRICING, BRANDS AND ORDERS

Bidder must state the commercial name of the product quoted, name and address of operator or agent from whom the product will be purchased and shall furnish an analysis of the product, date of analysis, by whom and their address.

Prices quoted must be F.O.B. Delivered Destination – Gardner, MA. No charges will be allowed for packing, crating, freight, handling, or cartage unless specifically stated and included with bid. The case of arithmetical error in any offer involving extension of prices quoted herein, the unit price will govern the final price of quantities offered. It is understood and agreed that should any price reductions occur between the opening of the bid offers and the completion of the delivery of goods or services, the benefit of all such reductions will be extended to the City of Gardner.

Any delivery made or work performed without written order or Contract are at the risk of the Vendor and may result in an unforeseeable claim. Actual needs of the City shall govern the actual amount delivered under Contract.

Where trade names or specific manufacturers are mentioned in the specifications, the City does not intend to limit competition, but merely to indicate the general type of commodity to be supplied. Naming of any commercial name, trademark or other identifier shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition, but shall establish a standard of equality only. Subject to the provisions of MGL C 30, Section 39(j) or other applicable statute, approval shall be at the sole discretion of the City, and the decision of the City shall be final. The City may require tests of all materials so submitted to establish quality standards at the vendor's expense. All directions, specifications, and advice by the manufacturer for proper installation, handling, storage, adjustment or operation of their equipment shall be complied with and responsibility for the proper performance shall continue to rest with the vendor.

The Contractor shall indemnify and save harmless the City of Gardner and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment, or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment, or apparatus, or any part thereof, in any such suit is held to constitute an infringement, the Seller within a reasonable time will, at its expense and as the City may elect, replace such material, equipment, or apparatus, or remove the material, equipment, or apparatus and refund the sums paid.

Contractor shall repair, replace, or make good, without cost to the City, any defects or faults arising within one (1) year after the date of acceptance of articles furnished hereunder resulting from imperfect or defective work done or materials furnished by Seller.

CONTRACT TERMS AND CONDITIONS

SECTION 1 – GENERAL PROVISIONS

1.1 DEFINITIONS

Contract Documents – Contract documents consist of the City-Contractor Agreement, all Bid Documents and all Modifications to the contract. A Modification is (a) a written amendment to the Contract signed by both parties; (b) a Change Order; (c) a written interpretation issued by the Contracting Officer; or (d) a written order for a minor change in the work issued by the Contracting Officer. The contract documents do not include sample forms.

Contract – The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined. Nothing contained in the Contract shall create any contractual relationship between the City or the Engineer and any sub-contractor.

Work – The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction.

Project – The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

By executing the Contract, the Contractor represents familiarity with the site and local conditions under which the Work is to be performed, and associated observations with the requirements of the Contract Documents.

It is the intent that Contract Documents include all items necessary for the proper performance of the Work. All work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. Should the specifications disagree within itself, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written modification to the contract.

The Contractor shall adhere to all of the sections of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

Where the specifications refer to codes, standards, requirements and publications of public and private bodies, references shall be understood to be the latest revision prior to the date of receiving bids, except where otherwise indicated.

Work is to be of good quality for the intended use and consistent with the quality of the surrounding work and the construction of the project where no explicit quality or standards for materials or workmanship are established.

All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with manufacturer's written or printed directions and instructions unless otherwise indicated.

1.3 OWNERSHIP AND USE OF DOCUMENTS

All specifications and all copies thereof are the property of the City of Gardner. They are to be used only with respect to this project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connections with the project is not to be construed as publication in derogation of the City's common law or other reserved rights.

The City's data may not be used in any way for solicitation to any third party.

1.4 SECURITY

Contractor must keep in place at all times a system to protect the integrity of the files, information or documentation of the City, including offsite operations and backup storage of files, and provisions for backup of a master file, if applicable.

Contractor must ensure that all personal information gained from working with the City is protected against loss and unauthorized access, use, modification and disclosure.

SECTION 2 – CITY OF GARDNER

2.1 DEFINITION

The term "City" refers to the City of Gardner.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

The City shall, at the time of execution of the City-Contractor Agreement, furnish the certification of adequate appropriation (purchase order).

Information or services under the City's control shall be furnished by the City with reasonable promptness after receipt from the Contractor of a written request for such information or services.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct defective work as required or persistently fails to carry out the work in accordance with Contract Documents, the City, by a written order, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required to coordinate work of itself or a separate contractor.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to any other remedy he may have, make such good deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to prior notice being given by the City. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

SECTION 3 – CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and means the Contractor or authorized representative.

The word “provide” shall mean furnish and install complete, including connections, unless otherwise specified.

3.2 REVIEW OF CONTRACT DOCUMENTS

Before starting work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents, including Specifications and all attachments, and shall at once report any error, inconsistency or omission discovered. Any necessary change shall be addressed. If the Contractor proceeds with work without such notice, having discovered such error, inconsistency or omission, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs arising therefrom.

3.3 SUPERVISION AND PROCEDURES

The Contractor shall supervise and direct the work and be responsible for coordinating all portions of work under the Contract.

The Contractor shall be responsible to the City for the acts and omissions of employees, subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

3.4 LABOR AND MATERIALS

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

The Contractor shall at all times maintain authority and enforce control among employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned.

3.5 WARRANTY

The Contractor warrants to the City that all work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements may be considered defective.

The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

3.6 TAXES

The Contractor shall pay all sales, consumer, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time the bids are received, whether or not yet effective.

3.7 PERMITS, FEES AND NOTICES

Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the

work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

It is not the responsibility of the Contractor to make certain the Contract Documents are in accordance with the applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the City shall be promptly notified in writing, and any necessary changes shall be accomplished by appropriate Modification.

If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto.

3.8 INDEMNIFICATION

The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from, or arising out of any act, omission, or neglect on the part of the Contractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the contract.

(1) The contractor further agrees to indemnify and hold harmless the City, including its agents, employees and representatives, from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work, or any activity related to the work provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and; (b) is caused in wholly or in part by any intentional, reckless or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

(2) The contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.

(3) In any and all claims against the City or any of their agents or employees by any employee of the Contractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workmen's Compensation Acts, disability benefit acts or other employee benefit acts.

(4) The obligations of the Contractor under this paragraph shall not extend to the liability of the City, its agents or employees, arising out of the giving of, or the failure to give, directions, or instructions by the City, its agents or employees provided such giving or failure to give directions is the primary cause of the injury or damage.

(5) The intent of the specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will

adequately protect it and the City from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

SECTION 4 – REVIEW AND AUDIT

The City of Gardner shall have reasonable access to inspect, monitor or evaluate the work performed in conjunction with this Contract. The City of Gardner will monitor performance of this contract by the following methods:

- Direct monitoring – observing the Contractor’s performance while work is being performed
- Follow-up monitoring – subsequent inspection of the work performed

Contractor shall provide access and information to auditors engaged by the City or State Auditor or as part of a third-party review approved by the City.

SECTION 5 – TERMINATION

Force Majeure - Neither party shall be liable to the other or deemed to be in breach under the Contract for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance will be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay. Performance Dates: It is agreed that since performance dates of the Contract are important, continued failure to perform for periods aggregating sixty (60) days or more, even for causes beyond the control of the Contractor, shall be deemed to render performance impossible and the City shall thereafter have the right to terminate the Contract in accordance with the provisions of the above. Delay or Hindrance: Contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of the Contractor, an extension of time shall be the Contractor’s sole remedy. Incomplete Performance: In the event of termination, all finished work and documentation, complete and incomplete shall be delivered to the City. Contractor shall be entitled to receive payment for any work performed and accepted under the Contract that was completed prior to the date of termination. In the event of termination prior to the completion of the work, the Contractor shall have no right to payment for lost profits or other consequential damages. Termination for Convenience: Notwithstanding any other provision of the Contract, the City reserves the right at any time in its absolute discretion to suspend or terminate the Contract in whole or in part for its convenience upon written notice of the Contractor. If any portion of the Contract so suspended is not recommended by written notices of the City within the time period specified in the written notice of suspension, the suspended portion of the Contract shall thereupon be deemed terminated as to that portion for the convenience of the City in accordance with this provision. The City shall incur no liability by reason of such termination for convenience, except for the obligation to pay for work performed and accepted and for reimbursable expenses accruing through the date of termination less any offset or claim of the Owner. Such obligation shall not exceed the available appropriation. The Contractor shall have no right to recover other amounts, including but not limited to amounts for lost profits, or consequential damages. Inadequate Funds: In the event that all or a portion of the project is postponed or terminated due to inadequate federal, state, or local funds, the provisions set forth in the above paragraph (Termination for Convenience) shall apply. Termination Cause: If, after the notice of termination cause, it is determined that said cause was invalid, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment shall be made as provided in this clause. Any termination or suspension of the Contract shall not impair the City’s right to recover damages occasioned by the fault of the Contractor. Any suspension shall not limit the right of the City of Gardner to terminate. Return of City Property: Upon termination, the Contractor shall immediately return to the City of Gardner, without limitation, all documents, plans, drawings, tools, equipment, and items of any nature whatsoever supplied to the Contractor by the City, or items developed by the Contractor in accordance with the terms of a Contract with the City of Gardner.

The Contract, executed in six copies, is to be construed as a Massachusetts Contract, is to take effect as a sealed instrument, sets forth the entire Contract between the parties, is binding upon and endures to the benefit of the parties hereto, and may be made canceled, modified, or amended only by a written instrument executed by both the parties named herein.